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TRIUMPH OF JUSTICE.

The decision of Judge George D. Gear, in the habeas corpus cases brought before him to test the verdict of Hawaiian juries during the transition period at last sets Hawaii right in its relation to the Act of Congress by which these Islands were made a part of the United States. Judge Gear's decision is not a surprise, since it would have been necessary for him to have performed some high and lofty tumbling had he reached any other conclusion. The spirit and intent of the Newlands Resolution is plain and to now reach any other decision than that rendered would be nothing more or less than an attempt to overrule the Supreme Court of the United States.

The effort of Attorney General Dole to secure an appeal would indicate that our biased Attorney General believes that the Supreme Court of Hawaii is capable of trying to upset the highest court of the land. This local Supreme Court has shown itself willing to render most anything in the way of an opinion but the Bulletin is disposed to believe that the "biased" Attorney General in his enthusiasm really cast an unnecessary reflection on the court presided over by Chief Justice Frear.

At last justice has been registered and although it comes three years late, the "transition period" remains only a relic of foolish expediency, an exhibition of judges taking upon themselves legislative authority for no other reason than their supposed fear of results should they interpret law according to its plain meaning. It is probable that the official mouthpieces will tell us of the jail delivery that will now take place but it is better that every criminal should be set at liberty than one citizen be imprisoned unlawfully. Throughout the whole transition period the rights of the citizen were made subservient to the demands of so-called expediency. Citizens were robbed of their liberty unlawfully imprisoned because it was expedient. No less gratifying than annexation itself is the record filed today that American principles and American law rule the land come what will. Convenience will no longer triumph over law and the rights of the citizen under the constitution will be maintained.

DEPRIVED OF LIBERTY UNCONSTITUTIONALLY

(Continued from page 1.)

12 Law, 27. Republic v. Edwards, Id. 55." This being the question is as to the reasoning in the Peacock case. Is the reasoning good? Let us refer to some of the reasoning. The court says on page 34 of the Peacock case: "The Joint Resolution annexing these Islands to the United States, regarded as an Act of Congress, would in accordance with the general rule applicable to acts of Congress, no other date being named, take effect upon its approval by the President, July 7, 1898. Indeed, it purports to take effect at once. It is in the present tense. The Islands are "hereby annexed." And yet no one would seriously contend that annexation took place before the transfer of sovereignty, August 12, 1898," and then on page 35, "It is therefore conceded that the Constitution did not take effect here until at least a month and five days after the Joint Resolution was in the present tense and although by its terms no further act such as a formal transfer of possession or sovereignty" was required to "complete annexation." Despite, however, the fact that the Hawaiian Supreme Court said that "no one would seriously contend that annexation took place before the transfer of sovereignty, August 12, 1898," the Attorney General of the United States, Hon. John W. Griggs, did, within a little less than four months after the Chief Justice handed down the decision in the Peacock case, decide that "the Hawaiian Republic, as a separate and sovereign power, ceased to exist when the resolution of annexation took effect," and that "The resolution of annexation took effect as of the date of its approval, to wit July 7, 1898, with respect to public lands, and not August 12, 1898 the date on which the ceremonies took place formally transferring possession." Opinions of the Attorney General, Vol. 22, pp. 574, 628. This was decided by him in September, 1899, and November 21 1899, he rendered a second opinion when Mr. A. S. Hartwell went to Washington and asked reconsideration of his first decision on behalf of President Dole, and reasserted his first opinion in the later one. Knowing undoubtedly of the decision of the Peacock case and that his first decision was contrary to the doctrine therein enunciated, the learned Attorney General in his second opinion "Opinions of the Attorney General, Vol. 22, p. 631) says: "I cannot but think that the Representative of the Hawaiian Government has failed to appreciate the fact that the Hawaiian Republic as a separate and sovereign power ceased to exist when the resolution of annexation took effect."

Attorney General.

It will be readily seen that the at least who "would that annexation took the transfer of sovereignty August 12, 1898," unless we are now asked to regard the decisions of the Attorney General as not "serious."

Again, the court says in its opinion in the Peacock case that if we had been ceded to the United States by a treaty of peace "would the Constitution extend to it forthwith ex proprio vigore with the result that crime could not be suppressed because there was no provisions for a grand jury or for unanimous verdict by petit juries and questions of private right could not be settled for the same reason that there was no provision for unanimous verdicts, and the rights of the people, however hostile to keep and bear arms could not be infringed, and trade with other countries might be suspended because there was no law extending the United States shipping and customs laws to the newly acquired Territory and no machinery for the collection of duties under United States laws and vessels registered under the laws of the acquired territory would be without a flag, so that, in a word, there would be anarchy in place of order?"

Now let us see how this reasoning has been upheld by the authorities in the United States. In the first place less than a month after the decision in the Peacock case the Hawaiian Supreme Court in an opinion by Judge Frear, who also wrote the decision in the Peacock case, held per syllabus, "The registry laws of Hawaii were not abrogated immediately upon the annexation of these Islands to the United States," and the court said, "The Hawaiian registration laws are a part of the municipal legislation of these Islands which was to remain in force temporarily by the terms of the Joint Resolution of annexation."

On September 12, 1899, this decision was reviewed by Hon. John W. Griggs (22 Opinions of Attorney General, p. 579, 581) who said, "the joint resolution of Congress for the annexation of the Hawaiian Islands provides that 'the municipal legislation of the Islands * * * not inconsistent with mine,' and then said, "With due re this joint resolution * * * shall United States shall otherwise deter remain in force until Congress of the spect to the judgments of the Supreme Court of Hawaii, I am unable to admit that a Hawaiian registry can now be issued to a vessel and the flag of Hawaii, "the usual token of registration, be flown by her," and "By the very language of the resolution municipal legislation inconsistent with the resolution shall not remain in force, and upon these views I am constrained to hold that the registration laws of Hawaii have been abrogated as a necessary consequence of annexation."

What did the Supreme Court of Hawaii say in regard to this last provision of the resolution of annexation? In the decision following the Peacock case, Republic v. Edwards, 12 Haw. 55, they said, in construing the provision that "The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished and not inconsistent with this joint resolution nor contrary to the Constitution of the United States, nor to any existing treaty of the United States shall remain in force," etc, that it was only by inference that they could hold that laws inconsistent with the resolution or contrary to the Constitution or to any existing treaty, were abrogated, and that to hold that the sentence made such an inference was to hold that it was intended to be, not, as it purports, an affirmative declaration of what should continue, but an indirect repeal of what was not declared to continue. On general principles such a construction should not be favored." The reasoning of the court was that the "inference is one of repeal and that repeals by implication are not favored." But the rule as stated does not apply here for Congress if it did anything abrogated and annulled such legislation and did not "repeal" it. A statute can be repealed only by the power which passed it, and Congress in acting upon our laws did not repeal any of them but it did abrogate and annul many of them. But regardless of this question the judgment of the local Supreme Court that laws inconsistent "with this Joint Resolution' and "contrary to the Constitution of the United States" and "any existing treaty" remain in force regardless of the provision of the resolution, and that these provisions were "intended to be merely declaratory and not remedial" and therefore are of no force or effect to abrogate inconsistent or contrary laws in expressly and emphatically repudiated by Attorney General Griggs where he says that "with all due respect to the judgments of the Supreme Court in Hawaii," by "the very language of the resolution municipal legislation inconsistent with the resolution shall not remain in force." (22 Opinions of the Attorney General, p. 580, 581).

And here it should be noted that the "very language of the resolution" is the same speaking of "legislation inconsistent" therewith as it is of laws "not contrary to the Constitution" and that it must follow that by "the very language of the resolution" laws "contrary to the Constitution" were abrogated.

The reasoning of the Peacock case and other cases in which Chief Justice Frear wrote the opinion of the court is based principally upon what the court calls a "transition period" and it is this "transition period" theory upon which the later decision in the Marshall case is based. That is that there was a period during which we were in a state of transition from a foreign country (with reference to the United States) to a country which became a part of the United States.

This theory this Court does not think sound, and believes that not only the authorities but the reasoning as set forth in the case of ex-parte Edwards, 13 Haw., p. 32, states the law as it is, and that the conclusion therein arrived at that the "Hawaiian Islands were a part of the United States on the 16th day of August, A. D. 1898; that the Fifth and Sixth Amendments to the Constitution of the United States were in force here at that time.

Transition Period Buried

The "transition period" theory has, however, been put to rest in "innocuous desuetude" by the Supreme Court of the United States in the "Insular cases," and all question as to the Peacock case and cases decided upon the reasoning therein being authority now in these Islands has been foreclosed by that court, the decisions of which are the supreme law of the land, binding as well upon the Supreme Court of this Territory as upon this Court. The Peacock case and the first Edwards cases were decided by the Supreme Court of the Republic of Hawaii upon the theory that the case of Fleming v. Page, 9 Haw., U. S. 603, in its opinion by Chief Justice Taney held that duties did not accrue to the United States in her newly acquired Territories until provision was made by Act of Congress for their collection and for collection districts, and the further theory that the subsequent case of Cross v. Harrison, 16 How. U. S. 164, did not modify or overrule the case of Fleming v. Page, in fact, our Supreme Court sought to distinguish the later case and to hold it not applicable. In other words, our Supreme Court relied upon the authority of Fleming v. Page and repudiated the case of Cross v. Harrison as mere dictum. The Supreme Court of the United States, however, in De Lima v. Bidwell, in the opinion of the Court (21 Supreme Court Reporter, pages 747-754) have held the reverse to be true and have decided that the case of Fleming v. Page on the point in question was mere dictum and was "practically overruled in Cross v. Harrison" (Id. p. 752). If the case relied upon by our Supreme Court (Fleming v. Page) was "practically overruled in Cross v. Harrison," and our Supreme Court refused to follow Cross v. Harrison, of what value now is the "reasoning" or the conclusion of our Supreme Court in the Peacock case and the first Edwards cases? The statement of the case contains the answer, for it follows as does night the day that the Supreme Court of the Republic of Hawaii has been overruled in its reasoning and conclusion based upon the authority of a case which has been overruled by the Supreme Court of the United States

In fact, the learned Attorney General seems to concede by his argument and in fact expressly conceded to this Court, in answer to a question by the Court, that this Court should not pay any attention to the Peacock case. The Supreme Court of the United States Court say, in the opinion of the court in De Lima v. Bidwell (Id. p. 748), in speaking of the case of Cross v. Harrison, supra, that "after the ratification of the treaty, California became part of the United States" and "became instantly bound and privileged" by the tariff laws of the United States. The court further said that "To the objection that no collection districts had been established in California and in apparent dissent from the views of the Chief Justice in Fleming v. Page, he added (p. 196, L. ed. 902), 'It was urged that our revenue laws covered only so much of the Territory of the United States as had been divided into collection districts, and that out of them no authority had been given to prevent the landing of foreign goods or to charge duties upon them, though such landing had been made within the territorial limits of the United States. To this it may be successfully replied that collection districts and ports of entry are no more than designated localities within and at which Congress had extended a liberty of commerce in the United States and that so much of its territory as was not within tany collection district must be considered as having been withheld from that liberty." The court further says that the court in Cross v. Harrison "seemed to take an entirely different view of the facts connected with the admission of those Territories from what had been taken in Fleming v. Page," and that "The doctrine that a port ceded to and occupied by us does not lose its foreign character until Congress has acted and a collector is appointed was distinctly repudiated with the apparent acquiescence of Chief Justice Taney, who wrote the opinion in Fleming v. Page and still remained the Chief Justice of the Court." The Court then states that "the practice and rulings of the Executive Department with respect to the status of newly acquired Territories prior to such status being settled by acts of Congress, is, with a single exception, strictly in line with the decision of this court in Cross v. Harrison, 16 How. 164," and then goes fully into the rulings as to Louisiana, Florida, Texas, California and Alaska. The court then states:

"From this resume of the decisions of this court, the instructions of the Executive Departments, and the above acts of Congress, it is evident that from 1803, the date of Mr. Gallatin's letter, to the present time, there is not a shred of authority except the dictum in Fleming v. Page (practically overruled in Cross v. Harrison) for holding that a district ceded to and in possession of the United States remains for any purposes a foreign country. Both these conditions must exist to produce a change of nationality for revenue purposes." The court then states: "But were this presented as an original question we should be impelled irresistibly to the same conclusion," (Id. p. 752.)

The court then proceeds to state that "by the ratification of the treaty of Paris the Island became territory of the United States," stating also that "a country ceases to be foreign the instant it becomes domestic."

"The theory that a country remains foreign with respect to the tariff laws until Congress has acted by embracing it within the customs union presupposes that a country may be domestic for one purpose and foreign for another. It may undoubtedly become necessary, for the adequate administration of a domestic Territory, to pass a special act providing the proper machinery and officers, as the President would have no authority, except under the war power, to administer it himself; but no act is necessary to make it a domestic Territory if once it has been ceded to the United States."

The theory that a country may remain foreign with respect to the tariff laws and domestic for other purposes, the court says, presupposes that "everything may be done which a Government can do in its own boundaries, and yet that the Territory may still remain a foreign country. That this state of things may continue for years, for a century even, but that until Congress enacts otherwise it still remains a foreign country. To hold that this can be done as a matter of law we deem to be pure judicial legislation. We find no warrant for it in the Constitution or in the powers conferred upon this court. It is true the non-action of Congress may occasion a temporary inconvenience, but it does not follow that courts of justice are authorized to remedy it by inverting the ordinary meaning of words."

Right here it suggests itself to the mind of the Court how differently have the Supreme Court of the Republic of Hawaii reasoned. They say in construing the plain meaning of the words that the municipal laws "not contrary to the Constitution" shall remain in force; that if they hold that laws contrary thereto are abrogated, crime could not be suppressed, because there is no provision for a grand jury or unanimous verdicts, and there is no machinery for the collection of duties under the United States laws, and vessels registered under the laws of the acquired territory would be without a flag, so that in a word there would be anarchy in place of order." (Peacock v. Republic, supra.) And therefore they "invert the ordinary meaning of words" and hold that the provision of the resolution that laws "not contrary to the Constitution" means "laws contrary and not contrary to the Constitution" remain in force.

This Court prefers to follow the ruling that courts of justice are not authorized to remedy temporary inconveniences by inverting the ordinary meaning of words.

But no such result as that stated by the Supreme Court and by the Attorney General would follow.

In ex parte Edwards, 13 Haw. 45, 46, where it was held that the defendant was guaranteed a unanimous verdict, the court said:

"Does this construction of the law mean, as has been earnestly contended, that criminals should, of necessity, go unpunished and that there was no protection to life and property on the Hawaiian Islands between the 7th of July, 1898, the date of signing the resolution, and the 14th day of June, 1900, the date the Organic Act went into effect? Certainly not. During all the period there was organized Government here, there were officers and courts, legally constituted, continued in office and existence by the order of President McKinley under the authority given in the joint resolution.

Returning to the decision in De Lima v. Bidwell, we find the court again saying (p. 754): "We are unable to acquiesce in this assumption that a territory may be at the same time both foreign and domestic."

The court then concludes: "We are therefore of the opinion that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws, but a Territory of the United States, that the duties were illegally exacted and that the plaintiffs are entitled to recover them back."

From a review of this decision it is very apparent that there can be no "transition period," as announced in the opinions of the Supreme Court of the Republic of Hawaii in the Edwards case; that instead of a "transition period" theory by which "temporary inconvenience" was sought to be remedied by "pure judicial legislation," the Hawaiian Islands either became domestic or remained foreign. There was no "transition period" about it, and no "inchoate annexation." "A country ceases to be foreign the instant it becomes domestic." "We are unable to acquiesce in the assumption that a territory may be at the same time both foreign and domestic." Thus speaks the Supreme Court of the United States of America, and in so speaking rings the death knell of "transition periods" and "inchoate annexation." Even the learned Attorney General now pauses and admits that he has incorrectly used this phrase in consequence of what the Supreme Court of the United States have said and that under their decision there could not be such a condition or period in the status of the Hawaiian Islands. As to the contention of the Attorney General that not even the first ten amendments to the Constitution were in force here prior to the Organic Act and that perhaps even slavery might exist, I can only say that even the Chief Justice, who wrote the decision in the Peacock and first Edwards cases, has hastened to deny any part in the decision holding that the amendment in regard to slavery was not in force here.

The Court has fully considered the great responsibility devolving upon it if it should discharge from imprisonment men convicted of grave and heinous offenses, but this Court will not willingly shirk its duty and allow any one to be restrained of his liberty if convinced that upon application to this Court the applicant has been deprived of his liberty contrary to a right guaranteed him by the Constitution then in force, and this Court firmly and unequivocally believing that at the time petitioner was tried he was guaranteed the right of trial by jury and that, in order to convict, all twelve of the jurors should have agreed to the verdict, and it affirmatively appearing on the record herein that three jurors dissented from the verdict, the petitioner is entitled under the Constitution this Court has taken its solemn obligation to uphold, to be discharged, and it is therefore ordered, adjudged and decreed that the writ of habeas corpus issue, and the prisoner be discharged. GEAR, Judge.

Mistress (to servant)—"Be careful not to spill any soup on the ladies' laps." Biddy (new in the service)—"Yes, mum; where shall I spill it?"—Glasgow Times.